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16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 QUALITY INVESTMENT PROPERTIES
SANTA CLARA, LLC,

21 Plaintiff,

22 v.

23 SERRANO ELECTRIC, INC., et al.,

24 Defendants.
25

26 And Related Cross-Actions.
27

CASE NO. 5:09-cv-05376-LHK

**STIPULATION FOR 60-DAY EXTENSION
OF DISCOVERY, MOTION, PRETRIAL
CONFERENCE, AND TRIAL DATES;
[PROPOSED] ORDER THEREON**

as modified by the Court

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1 The three parties to this action, plaintiff Quality Investment Properties Santa Clara, LLC,
 2 defendant and cross-claimant Serrano Electric, Inc., and defendant and cross-claimant Peterson
 3 Power Systems, Inc., pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure and Civil
 4 L.R. 6-2 and 7-12, stipulate to extend by 60 days the following currently scheduled case dates set
 5 forth in the Court's December 8, 2010 Minute Order and Case Management Order:

- 6 • April 18, 2011 fact discovery cutoff
- 7 • April 25, 2011 deadline to file motions to compel
- 8 • May 2, 2011 deadline to designate experts
- 9 • May 5, 2011 deadline to file and serve dispositive motions
- 10 • June 2, 2011 expert discovery cutoff
- 11 • July 20, 2011 pretrial conference
- 12 • August 1, 2011 trial

13 Good cause exists for the requested modification of the case schedule for the reasons
 14 discussed below.

15 1. There have been no prior time modifications in the case, whether by request of the
 16 parties or Court order, other than a short extension of time to complete the initial mediation
 17 discussed below.

18 2. The parties have been and continue to be actively and diligently prosecuting the
 19 case and do not wish to postpone the trial of this matter any more than reasonably necessary. In
 20 this regard, this case was filed in November 2009. Each of the defendants timely answered the
 21 complaint and filed cross-claims against one another. Shortly thereafter, the parties met and
 22 conferred as required by the Court's November 13, 2009 Order Setting Initial Case Management
 23 Conference and ADR Deadlines and agreed to participate in a private mediation to attempt to
 24 resolve the case before engaging in active litigation. In preparation for the initial mediation,
 25 Quality wished to produce certain damages-related documents to the defendants that Quality
 26 believed to be confidential. As such, Quality requested that the parties agree to a stipulated
 27 protective order in the form provided on the Court's website. Serrano's counsel agreed, but after
 28 a lengthy meet and confer process, Peterson's prior counsel refused. At that point, Quality filed a

1 motion for protective order, which was ultimately granted. In the interim, Peterson substituted
2 new counsel into the case, with new counsel needing a reasonable period of time to familiarize
3 themselves with the matter.

4 3. Quality was eventually able to produce its five binders of confidential damages-
5 related documents in early October 2010, and the parties participated in an initial mediation for
6 November 17, 2010. That mediation was unsuccessful. However, the parties ultimately agreed
7 to mediate again, subject to certain insurance carriers becoming involved in the case, the parties
8 exchanging documents, and the defendants having the opportunity to conduct certain depositions.

9 4. The case history above was discussed with the Court at the case management
10 conference held on December 8, 2010. Following that conference, the Court issued a Minute
11 Order and Case Management Order setting various deadlines and dates for the remainder of the
12 case, including an August 1, 2011 trial date.

13 5. Subsequent to the December 8, 2010 case management conference, the parties
14 have engaged in various written and deposition discovery in preparation for a second mediation
15 on March 3, 2011. This includes, without limitation, the following: (a) Quality propounded
16 requests for production of documents to both Serrano and Peterson; (b) Serrano propounded
17 requests for production of documents and interrogatories to Quality; (c) the defendants deposed
18 the following Quality witnesses (i) Lee Higgins, vice president of facilities, on January 12, 2011,
19 in San Francisco, (ii) Paul Oberle, director of construction services, on January 14, 2011, in San
20 Francisco, and (iii) Paul Corning, former general manager west, on January 14, 2011, in San
21 Francisco; (d) the defendants deposed the following non-party witnesses (i) Brian Banner of
22 Inglett & Stubbs (a consultant in connection with the data center at issue in this case), on January
23 20, 2011, in Suwanee, Georgia, (ii) Stephen Edge of Inglett & Stubbs, on January 20, 2011, in
24 Suwanee, Georgia, and (iii) Kenny Giese of Nabholz Construction Services (a contractor at the
25 facility), on February 18, 2011, in Rogers, Arkansas; and (e) Serrano issued business record
26 subpoenas to various non-parties. The defendants also attempted to depose a former Quality
27 employee, Baron Duffy, a facility manager at the data center at issue in this case, on January 21,
28 2011, in Suwanee, Georgia. The defendants were unable to subpoena Mr. Duffy, however, and

although Quality attempted to assist in coordinating Mr. Duffy's deposition, Mr. Duffy did not appear. Depositions of two other Quality witnesses, Mark Charlton and Roland Ignacio, were also scheduled for the week of February 21, 2011, in San Francisco, but were postponed due to a discovery dispute between Quality and Serrano. After meeting and conferring, Quality and Serrano are re-scheduling the depositions of these witnesses as described in Paragraph 7 below, while reserving the issue of Quality's demand for reimbursement of witness travel expenses related to the postponed depositions for further discussion between the parties and, hopefully, resolution without Court intervention.

6. The March 3, 2011 mediation again was unsuccessful. In that event, the parties had anticipated a full six weeks (March 4, 2011 through and including the current April 18, 2011 fact discovery cutoff) to complete fact discovery. However, due to various scheduling conflicts involving both witness and counsel unavailability, as well as certain discovery disputes that the parties are actively attempting to work through, this is no longer feasible.

7. At present, the parties have noticed and are attempting to confirm dates, times and locations for the following additional party and non-party depositions:

<u>Witness</u>	<u>Title</u>	<u>Witness Type</u>	<u>Date/Location as Noticed</u>	<u>Availability</u>
Peterson 30(b)(6)	Various (2-3 designees anticipated)	30(b)(6)	March 22, 2011; San Francisco	No; being rescheduled and/or combined with overlapping individual witness depositions.
Andy Bortolussi	Peterson technician	Individual	March 24, 2011; San Francisco	Tentatively yes.
Serrano 30(b)(6)	Various (4 designees anticipated)	30(b)(6)	March 28, 2011; San Francisco	Still being determined; likely to be rescheduled and/or combined with overlapping individual witness depositions.
James Gray	Peterson rental operations mgr.	Individual	March 30, 2011; San Francisco	Still being determined.
Mark Charlton	Quality director of development	30(b)(6)	March 30, 2011; Overland Park, Kansas	No. Due to limited witness availability and the travel involved, the parties are

				attempting to schedule the Mark Charlton, Mark Waddington, and Roland Ignacio depositions for a three-day block at or near Quality's corporate headquarters in Overland Park, Kansas. The witnesses' earliest availability is April 18-20, 2011. Witness and counsel preference is a three-day block in either the first or second week of May 2011.
Mark Waddington	Quality president	Individual	March 31, 2011; Overland Park, Kansas	No. See above.
Roland Ignacio	Quality director of critical systems	30(b)(6)	April 1, 2011; Overland Park, Kansas	No. See above.
George Schalk	Peterson engineer	Individual	April 1, 2011; San Francisco	Still being determined.
Dan Serrano	Serrano president	Individual	April 4, 2011; San Francisco	Tentatively yes.
Jason Allen	Former Serrano superintendent	Individual	April 6, 2011; San Francisco	Still being determined. Quality just learned that Mr. Allen is no longer employed with Serrano and therefore must be subpoenaed to ensure his appearance.
Steve Carlson	Serrano foreman	Individual	April 8, 2011; San Francisco	Tentatively yes.
Friendster	Quality customer	Non-party 30(b)(6)	April 11, 2011; San Francisco	Still being determined.
Dolby Laboratories	Quality customer	Non-party 30(b)(6)	April 11, 2011; San Francisco	Still being determined.
Spencer Yount	Serrano foreman	Individual	April 12, 2011; San Francisco	Tentatively yes.

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1 8. In addition to the depositions listed above, the parties may notice a handful of
2 additional non-party depositions, some of which may be out of state.

3 9. Importantly, the limited additional time requested by the parties via this
4 stipulation will not only permit the depositions discussed above and related discovery to be
5 conducted on a more economical and efficient basis, but it will also permit the parties to continue
6 to work through various pending and anticipated discovery disputes, hopefully without involving
7 the Court. Although one motion to compel has already been filed, others may, and likely will, be
8 avoided with additional time to meet and confer.

9 10. It is also important to note that the parties and their counsel are actively engaged
10 and do not wish to delay final resolution of the case. This is demonstrated by the limited
11 duration of the time extension being requested, 60 days, as opposed to a much longer period of
12 time.

13 11. This stipulation is the product of a substantive meet and confer process between
14 the parties' counsel. Counsel participated in a lengthy conference call on the morning of
15 Wednesday, March 9, 2011, to discuss deposition scheduling and related discovery issues.
16 Counsel then reviewed and discussed these issues with their respective clients and participated in
17 a second conference call on the morning of Thursday, March 10, 2011, during which a proposed
18 deposition schedule was further refined and the parameters of this stipulation were discussed.
19 Counsel agreed to prepare and submit this stipulation to the Court as soon as practicable. An
20 initial draft was prepared and circulated to all counsel for comment on the afternoon of March
21 10, 2011, with the stipulation being finalized and filed the following day, March 11, 2011.

22 12. For good cause shown, the parties stipulate and agree, and respectfully request
23 that the Court approve, an approximately 60-day continuance of the current case schedule to
24 create a modified case schedule as follows:

- 25 • Fact discovery cutoff – June 17, 2011
- 26 • Deadline to file motions to compel – June 24, 2011
- 27 • Deadline to designate experts – July 1, 2011
- 28 • Deadline to file and serve dispositive motions – July 8, 2011

- Expert discovery cutoff – August 1, 2011
- Pretrial conference – September 21, 2011
- Trial – October 3, 2011

13. If the Court is not available for a trial beginning on October 3, 2011, but does have an open trial date or dates within approximately four to six weeks thereafter, the parties respectfully request that the trial be scheduled on one of those open dates, and that the pretrial dates be continued for the same number of days as the new trial date.

DATED: March 11, 2011 SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: /s/ Joel M. Long_____
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Attorneys for Plaintiff
Quality Investment Properties Santa Clara, LLC

DATED: March 11, 2011 LECLAIRRYAN LLP

By: /s/ Jill K. Rizzo_____
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Serrano Electric, Inc.

DATED: March 11, 2011 LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Katherine Higgins_____
Katherine A. Higgins
Attorneys for Defendant and Cross-Claimant
Peterson Power Systems, Inc.

[PROPOSED ORDER FOLLOWS ON NEXT PAGE]

[PROPOSED] ORDER

**PURSUANT TO STIPULATION, THE COURT ORDERS THE FOLLOWING
MODIFIED CASE SCHEDULE:**

The Court grants a 30-day continuance of deadlines:

- Fact discovery cutoff – May 18, 2011
- Deadline to file motions to compel – May 25, 2011
- Deadline to designate experts – June 2, 2011
- Deadline to file/serve dispositive motions – June 9, 2011, to be heard July 21, 2011 at 1:30 p.m.
- Expert discovery cutoff – July 1, 2011
- Pretrial conference – August 24, 2011 at 2 p.m.
- Trial – September 19, 2011 at 9 a.m.

Further extensions of the case schedule will not be favored.

Dated: March 17, 2011



Lucy H. Koh
United States District Judge